

Message Text

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ACTION OFA-01

INFO OCT-01 ARA-06 IO-11 ISO-00 OIC-02 FEA-01 CIAE-00

DODE-00 NSAE-00 NSCE-00 SSO-00 USIE-00 INRE-00 ACDA-05

AGR-05 AID-05 CEA-01 CEQ-01 CG-00 CIEP-01 COME-00

DLOS-04 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00

H-02 INR-07 INT-05 JUSE-00 L-03 NSC-05 NSF-01 OES-03

OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 SAL-01 /109 W

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FM AMEMBASSY QUITO

TO SECSTATE WASHDC IMMEDIATE 9322

INFO AMEMBASSY LIMA IMMEDIATE

AMEMBASSY MEXICO CITY IMMEDIATE

USMISSION USUN NY IMMEDIATE

C O N F I D E N T I A L QUITO 1874

C O R R E C T E D C O P Y (PARA 1 LINE 14)

E.O. 11652: GDS

TAGS: PLOS EFIS EC

SUBJ: FOREIGN MINISTRY COMMENTS ON DRAFT LOS ARTICLE 53 PREPARED
DURING USG-GOE INFORMAL CONSULTATIONS FEBRUARY 2 AND 3

REF: (A) QUITO 1843 (B) QUITO 1013

1. POLCOUNS MET ON MARCH 10 WITH AMBASSADOR TEODORO BUSTAMANTE
(FOREIGN MINISTRY ADVISER ON TERRITORIAL SOVEREIGNTY) TO
DISCUSS VARIOUS LOS MATTERS, INCLUDING ECUADOREAN WITHDRAWAL
FROM TUNA TALKS SCHEDULED FOR MARCH 8-12 IN NEW YORK. BUSTAMANTE
REPEATED INFORMATION GIVEN TO THE AMBASSADOR THE PREVIOUS
EVENING BY AMBASSADOR GARCIA VELASCO (FOREIGN MINISTRY LEGAL
ADVISER) THAT COMBINED PERUVIAN AND INTERNAL MINISTRY OPPOSITION
LED TO GOE'S WITHDRAWAL FROM TUNA MEETING. HE SAID THAT GOP
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AND CRITICS WITHIN THE MINISTRY HAD EXPRESSED CONCERN ABOUT THE

DRAFT ARTICLE 53 NEGOTIATED BY USG DELEGATION AND FOREIGN MINISTRY REPRESENTATIVES IN QUITO ON FEB 2 AND 3. (SEE REF B) ACCORDING TO BUSTAMANTE, CRITICS' CONCERNS DERIVE PRIMARILY FROM INADEQUACY OF THE DRAFT TO EXPRESS FULLY THE UNDERSTANDING THAT EXISTED BETWEEN USG AND GOE DURING CONSULTATIONS ABOUT CONTENT OF DRAFT TEXT, ALTHOUGH SOME SUBSTANTIVE DIFFERENCES REMAIN. BUSTAMANTE AND POLCOUNS REVIEWED DRAFT TEXT LINE BY LINE, WITH BUSTAMANTE POINTING OUT FOLLOWING CONCERNS.

2. WITH RESPECT TO PARAGRAPH 1 OF DRAFT ARTICLE 53, CRITICS EXPRESSED CONCERN ABOUT REFERENCE TO AN "ECONOMIC ZONE" AND WHETHER THE PARAGRAPH IN PARENTHESIS MADE FULLY CLEAR THAT ANY REGIONAL ARRANGEMENT WOULD HAVE TO AVOID THE DIFFERENT JURISDICTIONAL POSITIONS HELD REGARDING THE TERRITORIAL SEA AND ECONOMIC ZONE CONCEPTS. PERUVIAN AND MINISTRY OPPONENTS ARE ALSO CONCERNED ABOUT THE OMISSION OF A REFERENCE TO ARTICLES 50, 51 AND 52 WHICH WAS INCLUDED AS VARIANT B TO PARAGRAPH 1 IN THE GALINDO-POHL TEXT OF DECEMBER 2, 1975. BUSTAMANTE STATED IT WAS NECESSARY TO FIND LANGUAGE THAT SAYS REGULATION OF HIGHLY MIGRATORY SPECIES SHOULD BE GOVERNED BY ARTICLE 53, BUT THAT WHERE A REGIONAL ORGANIZATION DOES NOT EXIST THAT THE COASTAL STATE WILL EXCLUSIVELY REGULATE EXPLOITATION OF HIGHLY MIGRATORY SPECIES WITHIN ITS 200 MILE ZONE.

3. PARAGRAPH 2 OF THE DRAFT ARTICLE 53 DEVELOPED IN QUITO WAS CRITICIZED FOR LACK OF CLARITY WITH RESPECT TO THE LANGUAGE "THROUGH AN APPROPRIATE INTERNATIONAL ORGANIZATION" WHICH THE CRITICS ERRONEOUSLY CONSTRUED AS MEANING A STATE COULD BELONG TO NO MORE THAN ONE INTERNATIONAL ORGANIZATION DEALING WITH FISH. (THIS, OF COURSE, IS AN ABSURD INTERPRETATION AND COULD PROBABLY BE CORRECTED IN SPANISH BY THE USE OF "MEDIANTE ALGUNA ORGANIZACION" INSTEAD OF "MEDIANTE UNA ORGANIZACION".)

4. IN PARAGRAPH 5, PERUVIAN "EXPERT" DR. ANTONIO LANDA OBJECTED TO THE TERMINOLOGY "MAXIMUM SUSTAINABLE YIELD". HE CLAIMS THIS LANGUAGE IS CONFUSING AND MIGHT PERMIT NATIONS TO OVER-EXPLOIT THE SPECIES. HE SUGGESTS THAT THE

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APPROPRIATE TERM IN SPANISH WOULD BE "LA MAXIMA CAPTURA PERMISIBLE" (MAXIMUM PERMISSIBLE CATCH)M BUSTAMANTE PERSONALLY FEELS THAT IT IS LANDA WHO IS CONFUSED; AND THAT THE "MAXIMUM SUSTAINABLE YIELD" LANGUAGE IS MORE PRECISE, SINCE IT SUGGESTS A CATCH WHICH ALLOWS THE SPECIES TO SUSTAIN ITSELF INDEFINITELY, WHEREAS A "MAXIMUM PERMISSIBLE CATCH" COULD BE SET AT AN AMOUNT WHICH WOULD ENDANGER THE SPECIES.

5. BUSTAMANTE STATED THAT THERE WERE TWO OBJECTIONS TO THE COMMON ELEMENT OF PARAGRAPH 6 OF THE DRAFT, AND THAT ONE OF THESE WAS SUBSTANTIVE. OBJECTIONS HAVE BEEN RAISED TO THE LANGUAGE "IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE ORGANIZATION". THE GOE WOULD LIKE TO HAVE LANGUAGE LISTING SPECIFIC CONDITIONS OR REQUIREMENTS IDENTICAL OR SIMILAR TO THAT CONTAINED IN ARTICLE 52, PARAGRAPH 4. THE GOE OBJECTS TO THE "ORGANIZATION" HAVING SUCH LATITUDE IN THE ESTABLISHMENT OF CRITERIA. THE GOE ALSO BELIEVES THAT THE LANGUAGE "NORMAL CATCH AND EXISTING FISHING PATTERNS THROUGHOUT THE REGION" REQUIRES ELABORATION IN ORDER TO CONVEY MORE PRECISE MEANING.

6. WITH RESPECT TO THE COMMON ELEMENT OF PARAGRAPH 7, OBJECTIONS WERE RAISED REGARDING THE LANGUAGE "THE ORGANIZATION SHALL TAKE MEASURES FOR THIS ESTABLISHMENT OF REASONABLE UNIFORM FEES TO BE APPLIED IN EACH REGION". BUSTAMANTE SAID THE LANGUAGE WAS "TOO IMPERATIVE," AND THAT SOME SUBSTITUTE SHOULD BE FOUND TO SOFTEN THE LANGUAGE. HE SUGGESTED, FOR EXAMPLE, "THE ORGANIZATION SHALL TRY TO ESTABLISH MEASURES...".

7. COMMENT: AS CAN BE SEEN FROM THE ABOVE COMMENTS, THE PROBLEMS ENCOUNTERED BY THE GOP AND ECUADOREAN MINISTRY CRITICS MIGHT BE RESOLVED THROUGH MORE PRECISE AND CAREFUL DRAFTING. FEW OF THE CRITICISMS ARE SUBSTANTIVE IN NATURE, AND BOTH AMBASSADORS GARCIA AND BUSTAMANTE BELIEVE LANGUAGE COULD BE FOUND TO SATISFY THE CRITICS. THERE IS A CLEAR POSSIBILITY, HOWEVER, THAT SOME CRITICS, GIVEN THEIR ABSURDITY OF THEIR CRITICISMS, ARE IN GENERAL OPPOSITION TO REACHING AN AGREEMENT.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, AGREEMENT DRAFT, MEETING AGENDA, NEGOTIATIONS, FOREIGN POLICY POSITION
Control Number: n/a
Copy: SINGLE
Draft Date: 10 MAR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: buchant0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976QUITO01874
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760091-0473
From: QUITO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760375/aaaacohl.tel
Line Count: 146
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION OFA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 QUITO 1843, 76 QUITO 1013
Review Action: RELEASED, APPROVED
Review Authority: buchant0
Review Comment: n/a
Review Content Flags:
Review Date: 14 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <14 MAY 2004 by ElyME>; APPROVED <29 OCT 2004 by buchant0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: FOREIGN MINISTRY COMMENTS ON DRAFT LOS ARTICLE 53 PREPARED DURING USG-GOE INFORMAL CONSULTATIONS FEBRUARY 2 AND 3
TAGS: PLOS, EFIS, EC, US, (BUSTAMANTE, TEDDORO)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006